

Thank you for participating in our June 3 webinar, The Realities of Reopening, hosted by CMA and Brann & Isaacson. We hope you found this presentation helpful. As promised, we have provided brief answers to the chat questions we missed during the presentation, as well as the reference links posted in the chat.

Resources shared during the webinar:

- B&I summary of Executive Order #55: https://www.brannlaw.com/wp-content/uploads/2020/06/EO-55-Client-Alert_final.pdf
- B&I analysis of OSHA recordkeeping requirements: https://www.brannlaw.com/wp-content/uploads/2020/05/OSHA-Recordkeeping-Update-5.27_final.pdf
- B&I recommendations for navigating unemployment fraud and identity theft: https://www.brannlaw.com/wp-content/uploads/2020/06/Navigating-Unemployment-Fraud-and-Identity-Theft_final.pdf
- Maine's COVID-19 prevention checklists: <https://www.maine.gov/decd/covid-19-prevention-checklists>
- Maine Department of Labor Q&A on Unemployment Compensation During COVID-19: <https://www.maine.gov/labor/docs/2020/covid19/faq/english.pdf>
- EEOC Q&A related to the ADA and COVID-19: <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>
- CDC guidance for businesses and employers: <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>
- Article from the New Yorker, *Amid the Coronavirus Crisis, A Regimen for Re-Entry*: <https://www.newyorker.com/science/medical-dispatch/amid-the-coronavirus-crisis-a-regimen-for-reentry>

Unanswered chat questions:

- When should healthcare workers wear a face mask v. plastic face shield?
 - Consult the CDC and OSHA for pertinent standards, which may vary by facility type. An overview of CDC recommendations can be found here: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html>
- What should we do if an employee refuses to wear a cloth face covering?
 - If the employee is unwilling to wear a face covering for medical or religious reasons, engage in the interactive process and explore reasonable accommodations. If the employee is unwilling to wear a face covering for other reasons, they may be disciplined according to company policy.
- How should we handle quarantine for essential employees traveling between states? Must they quarantine when they arrive in Maine?

- Under Executive Orders [19](#) and [34](#), employees traveling to Maine to perform essential services, such as health care, utilities, and other essential operations, need not abide by the 14 day quarantine when engaging in essential services.
- What if employees won't wear mask for mental health reasons?
 - The ADA pertains to both physical and mental health. Approach this issue on a case-by-case basis. Engage in the interactive process to determine if reasonable accommodations are appropriate. Consider obtaining medical information to support the accommodation request, provided that you treat all disabilities in a consistent manner.
- What about taking temperatures of employees, visitors, vendors?
 - The EEOC has given the green light to take the temperature of employees. Consider doing these temperature screenings in private areas. Any records should be kept separate from the employee's personnel file. More information is available here: https://www.eeoc.gov/sites/default/files/2020-04/pandemic_flu.pdf
 - As for screening visitors and vendors, consult the COVID-19 checklists for specific guidance: <https://www.maine.gov/dec/covid-19-prevention-checklists>
- If someone is medically unable to wear a mask, might a face shield be a substitute?
 - Sure, a face shield may be considered a reasonable accommodation.
- Is an extended leave a reasonable accommodation related to possible exposure to COVID for a high-risk individual?
 - Yes. Evaluate whether the employee may qualify for an ADA medical leave. The duration will be subject to an analysis of undue hardship to your business or operations.
- If an employee has a known medical condition that puts them in the high risk category, should we allow them to come back to work even if they want to?
 - This is a highly individualized question. We recommend engaging in the interactive process and exploring reasonable accommodations, such as remote work or an extended leave of absence.
- Do all the leaves apply to healthcare workers or are they exempt?
 - Employers may choose to allow healthcare workers to take FFCRA leave or may exempt these workers from these leave options. Other protected leaves (e.g, FMLA and medical leave for a disability) are available to healthcare workers.
- Will the FFCRA apply if you rehire enough employees to go over the 500?
 - Once an employer rehires enough employees to exceed the 500 employee threshold, the employer need not offer FFCRA leaves.
- How does the 14 day quarantine work for workers who periodically / regularly work in NH, VT and Mass as part of their job?
 - There is no exception by Executive Order for workers who regularly commute in and out of Maine; there is only an exception for those workers engaged in essential services.
- As part of the return to work evaluative process, what is the best way to get staff to self-identify if they are high risk or perhaps living with a family member who is high risk? Should we consider asking this anonymously in some type of return to work survey?

- The EEOC states employers may survey employees to identify who may be unavailable due to a pandemic, so long as the questions are not disability-related. The surveys do not need to be conducted anonymously. More information is available here: https://www.eeoc.gov/sites/default/files/2020-04/pandemic_flu.pdf
- If you have to lay people off due to a downturn in business, what do we need to be concerned with from a legal standpoint? Does longevity play a factor or anything else we need to be aware of?
 - Any layoffs or reductions in force should be done using ratings with objective criteria so not to give rise to discrimination claims. Seniority is a prudent factor to use as it tends not to adversely impact older employees. However many employers want to keep their best performers, so using objective performance criteria and a ranking system is a good practice. Also consider the company's obligation to provide notices under the WARN Act if the layoffs are significant. Our overview of the WARN Act may be accessed here: <https://www.brannlaw.com/wp-content/uploads/2020/03/03-24-20-WARN-Act-Alert.pdf>
- Does expanded FMLA apply to employers >500 ee's
 - No
- In light of the recent protests, how—if at all—should employers address, manage, or engage large gatherings that could present an increased risk of spreading infection?
 - This is a new issue for employers and it will require balancing the need to be safe with a recognition of the desire of employees to participate in public events. Of course employers must comply with the Governor's Executive Orders on large gatherings (now 50). Given the fact that employees will be attending more events with at least 50 persons present, and sometimes more, it underscores the importance of screening, use of face coverings, adoption of best safety and hygiene practices and social distancing at work. Avoid treating employees who attend protests differently than employees who attend other large gatherings.

The information provided in this document does not, and is not intended to, constitute legal advice. All information and materials are for general purposes only. For further information, or to obtain advice regarding a particular legal matter, please consult with legal counsel.